

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE SERVICES

Before the Commissioner of Financial and Insurance Services

In the matter of

XXXXX

Petitioner

File No. 86803-001

v

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
This 3rd day of March 2008
by Ken Ross
Commissioner

ORDER

I

PROCEDURAL BACKGROUND

On December 18, 2007, XXXXX., authorized representative of XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Services under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901 *et seq.* The Commissioner reviewed the material submitted and accepted the request on December 27, 2007.

Because it involved medical issues the Commissioner assigned the case to an independent review organization which provided its analysis and recommendations to the Commissioner on January 10, 2007.

II

FACTUAL BACKGROUND

The Petitioner receives health care benefits from Blue Cross Blue Shield of Michigan (BCBSM) through the Michigan Education Special Services Association (MESSA), an underwritten group. Coverage is governed by the MESSA Super Care 1 2003 Revision plan (the certificate).

The Petitioner requested preauthorization of a total lumbar disc arthroplasty and prodisc artificial disc replacement that was proposed by his doctor. BCBSM denied preauthorization of these procedures because it considered them experimental or investigational for treatment of the Petitioner's condition.

The Petitioner appealed BCBSM's denial. After a managerial-level conference on November 27, 2007, BCBSM did not change its decision and issued a final adverse determination dated November 28, 2007.

III ISSUE

Did BCBSM properly deny preauthorization for the Petitioner's total disc arthroplasty surgery?

IV ANALYSIS

Petitioner's Argument

The Petitioner is a thirty-six year old male who suffers from degenerative disc disease and severe back pain. His symptoms have been unresponsive to palliative interventions, including physical therapy, pain medication, bed rest, analgesics and pain clinic treatments. Pain has affected his overall physical function, the ability to perform activities of daily living and his quality of life.

The Petitioner's doctors have indicated that he is in need of major reconstructive surgery. Recently the FDA has approved disc replacement arthroplasty. The Petitioner's physician believes Petitioner is a good candidate for this procedure. Petitioner received a second opinion from a spine surgeon who does these surgeries and he agreed with the proposed surgery.

The Petitioner argues that the disc replacement arthroplasty surgery that has been recommended by his doctors is medically necessary and not experimental or investigational. He believes that it should be a covered benefit under his MESSA/BCBSM certificate.

BCBSM's Argument

The certificate defines "Experimental or Investigational" as "a service, procedure, treatment, device, drug, or supply that has not been scientifically demonstrated to be safe and effective for treatment of the patient's condition." The certificate, on page 28, also says: "MESSA/BCBSM/BCS does not pay for experimental or investigational treatment. . . ." BCBSM's medical policy statement for artificial intervertebral disc replacement states that "[a]rtificial intervertebral disc replacement is experimental. It has not been scientifically demonstrated to be better than currently available lumbar fusion procedures."

BCBSM believes that it is not required to cover the Petitioner's requested artificial intervertebral disc replacement.

Commissioner's Review

The certificate sets forth the benefits that are covered. A procedure that is not accepted as the standard of care and has not been demonstrated to be as safe and effective as conventional or standard treatment is considered to be investigational or experimental and is not a covered benefit under the terms of the Petitioner's coverage.

The question of whether the Petitioner's proposed artificial intervertebral disc replacement surgery is considered experimental or investigational for treatment of the Petitioner's condition was presented to an independent review organization (IRO) for analysis as required by section 11(6) of PRIRA, MCL 550.1911(6). The IRO physician reviewer is certified by the American Board of Orthopedic Surgery, is an instructor at a major university in the eastern United States, is published in peer-reviewed literature, and is in active practice.

The IRO's report states: "Based on review of the medical records provided, the total disc arthroplasty anterior approach would be considered experimental and investigational for this enrollee's condition. . . . as there are no well-controlled studies following the Food and Drug Administration (FDA) approval that have demonstrated its efficacy."

While the Commissioner is not required in all instances to accept the IRO's recommendation, it is afforded deference by the Commissioner. In a decision to uphold or reverse an adverse determination, the Commissioner must cite "the principal reason or reasons why the Commissioner did not follow the assigned independent review organization's recommendation." MCL 550.1911(16) (b). The IRO reviewer's analysis is based on extensive expertise and professional judgment. The Commissioner can discern no reason why that judgment should be rejected in the present case.

Therefore, the Commissioner accepts the findings of the IRO that the Petitioner's proposed total disc arthroplasty surgery is considered investigational/ experimental.

V ORDER

Respondent BCBSM's November 28, 2007, final adverse determination is upheld. BCBSM is not required to preauthorize or cover the Petitioner's total lumbar disc arthroplasty and prodisc artificial disc replacement surgery since it is considered to be investigational for treatment of his condition.

Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Services, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.